



W. Gamm
#27
10.3.03
PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Stephen Peter FITZGERALD et al.

Group Art Unit: 1743

Application No.: 09/389,082

Examiner: L. Cross

Filed: September 2, 1999

Docket No.: 104161

For: IMPROVEMENTS RELATING TO ASSAY DEVICES

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GROUP 1700

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:)

In reply to the July 1, 2003 Office Action, reconsideration of the rejection is respectfully requested in light of the following remarks.

Claims 1-3, 6-13 and 15-21 are pending.

The Office Action rejects claims 1-3, 6-13 and 15-21 under 35 U.S.C. §103(a) over European Patent No. 569753 to Westhall (hereinafter "Westhall") in view of U.S. Patent No. 5,945,334 to Besemer et al. (hereinafter "Besemer"). This rejection is respectfully traversed.

Westhall in combination with Besemer fails to teach or suggest an assay assembly (or a method of constructing an assay assembly) having a retaining means comprising at least one hot or cold formed projection on the inner surface of the side wall, as set forth in independent claims 1 and 17.

The Office Action admits that Westhall fails to teach or suggest the above-mentioned feature. However, the Office Action, at page 3, asserts that Besemer, in Fig. 21, teaches support structures 2115 in the packaging wall, each of the support structures 2115 being "a

projection in the well...." Applicants respectfully disagree with the Office Action's assertion, as well as its interpretation and application of the teachings of Besemer and Westhall to claims 1-3, 6-13 and 15-21.

Besemer, at col. 16, lines 58-62, and in Fig. 21, discloses that the "chip 120 is wedged and held into position by notch 2115." (Emphasis added) Thus, contrary to the Office Action's assertion, in Bessemer, the chip 120 is secured in notches 2115 formed in the walls of the cavity 310, not projections in the wall. The American Heritage College Dictionary, Third Ed., at page 933 (copy enclosed), defines "notch" as "a V-shaped cut" (emphasis added). The same dictionary, at page 1094 (copy enclosed), defines "projection" as a "thing or part that extends outward beyond a prevailing line or surface" (emphasis added).

Applicants respectfully submit that, based on its plain meaning, a notch on an inner surface of a side wall cannot be a projection on the inner surface of the side wall. Thus, Applicants submit that the Besemer fails to disclose, teach or suggest retaining means having the features set forth in independent claims 1 and 17.

Further, the Office Action asserts that "it would have been obvious to one of ordinary skill in the art to incorporate projections [of Besemer] onto the wells of Westhall so that chips will remain in the well in a secure manner." Applicants respectfully disagree.

First, as discussed above, Bessemer fails to disclose retaining means comprising at least one hot or cold formed projection on the inner surface of the side wall, as set forth in independent claims 1 and 17. Second, Applicants submit that there is no reason or motivation to modify Westhall to include retaining means because in Westhall, the holder, i.e., the tubular receiving element 2, is designed to be maintained in an upright condition.

For at least these reasons, Applicants respectfully submit that independent claims 1 and 17 are patentable over the applied art. Claims 2, 3, 6-13, 15, 16, 18-21, which depend

from claims 1 and 17 respectively, also are patentable over the applied art for at least the reasons discussed above.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-3, 6-13 and 15-21 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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JAO:GPS/dmw

Attachment:

The American Heritage College Dictionary, Third Ed., pp. 933 and 1094

Date: September 26, 2003

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Norwegian elkhound



nose
A. Cartilage
B. Bone
C. Frontal sinus
D. Olfactory bulb
E. Nostril

write *She bought not only a car but also a lawnmower.* • In the *not only* construction *also* is often omitted when the second part of the sentence merely intensifies the first: *She is not only smart but brilliant.* See Usage Note at *only*.

no·ta (nō'tā): *n.* Pl. of *notum*.

no·ta be·ne (nō'tā bē'nē, bē'nē): Used to direct attention to something esp. important. [Lat. *nota bene*, note well.]

no·ta·bil·i·ty (nō'tā-bil'i-tē) *n., pl. -ties*. 1. The state or quality of being eminent or worthy of notice. 2. A prominent or notable person.

no·ta·ble (nō'tā-bal) *adj.* 1. Worthy of note or notice; remarkable. 2. Characterized by excellence or distinction; eminent. See *Syns* at *noted*. — *n.* 1. A person of distinction or great reputation. 2. *Often Notable*. One of a council of prominent persons in pre-Revolutionary France called into assembly to deliberate at times of emergency. — *no'ta·ble·ness* *n.* — *no'ta·bly* *adv.*

no·tar·i·al (nō-tār'ē-əl) *adj.* 1. Of or relating to a notary public. 2. Executed or drawn up by a notary public. — *no'tar'i·al·ly* *adv.*

no·ta·rize (nō'tā-rīz) *tr.v., -rized, -rizing, -rizes*. To certify or attest to (the validity of a signature on a document, for example) as a notary public. — *no'ta·ri·za'tion* (-rī-zā'shən) *n.*

no·ta·ry (nō'tā-rē) *n., pl. -ries*. A notary public. [ME *notarie* < OFr. *notaire*, *notarie* < Lat. *notarius*, relating to shorthand, shorthand writer < *nota*, mark. See *NOTE*.] **notary public** *n., pl. notaries public*. A person legally empowered to witness and certify the validity of documents and take affidavits and depositions.

no·tate (nō'tā) *tr.v., -tated, -tating, -tates*. To put into notation. [Back-formation < *NOTATION*.]

no·ta·tion (nō-tā'shən) *n.* 1. a. A system of figures or symbols used in a specialized field to represent numbers, quantities, tones, or values: *musical notation*. b. The act or process of using such a system. 2. A brief note; an annotation: *marginal notations*. [Lat. *notatio*, *notatō* < *notatus*, p.p. of *notāre*, to note < *nota*, note. See *NOTE*.] — *no'ta·tion·al* *adj.*

notch (nōch) *n.* 1. a. A V-shaped cut. b. Such a cut, used for keeping a record. 2. A narrow pass between mountains: 3. *Informal*. A level or degree: *a notch higher*. — *tr.v., notched, notching, notches*. 1. To cut a notch in. 2. To record by or as if by making notches: *notched the score on a stick*. 3. *Informal*. To achieve; score. [Prob. < the phrase **an otc* < Fr. *oche* < OFr. < *ochier*, to notch.]

note (nōt) *n.* 1. A brief record, esp. one written down to aid the memory. 2. A brief informal letter. 3. A formal written diplomatic or official communication. 4. A comment or an explanation, as on a passage in a text. 5. a. A piece of paper currency. b. A certificate issued by a government or a bank and sometimes negotiable as money. c. A promissory note. 6. *Mus.* a. A tone of definite pitch. b. A symbol for such a tone, indicating pitch by its position on the staff and duration by its shape. c. A key of an instrument, such as a piano. 7. The characteristic vocal sound made by a songbird or other animal. 8. The sign of a particular quality or emotion. 9. Importance; consequence. 10. Notice; observation. 11. *Obsolete*. A song, melody, or tune. — *tr.v., not·ed, not·ing, notes*. 1. To observe carefully; notice. See *Syns* at *see*. 2. To make a note of; write down. 3. To show; indicate. 4. To make mention of; remark. [ME < OFr. < Lat. *nota*, annotation. See *gnō·*.] — *not'er* *n.*

note·book (nōt'boōk) *n.* A book of blank pages for notes. **not·ed** (nō'tēd) *adj.* Distinguished by reputation; famous: *a noted physician*. — *not'ed·ly* *adv.* — *not'ed·ness* *n.*

Syns: noted; celebrated, eminent, famed, famous; illustrious, notable, preeminent, renowned. The central meaning shared by these adjectives is "widely known and esteemed": *a noted author; a celebrated musician; an eminent scholar; a famed scientist; a famous actor; an illustrious judge; a notable historian; a preeminent archaeologist; a renowned painter.* *Ant: obscure.*

note of hand *n., pl. notes of hand*. See *promissory note*.

note·wor·thy (nōt'wūr'thē) *adj., -thier, -thiest*. Deserving notice or attention; notable: *a noteworthy advance in cancer research*. — *note'wor'th·i·ly* *adv.* — *note'wor'th·i·ness* *n.*

NOT gate (nōt) *n.* *Comp. Sci.* A logic circuit that produces an output inverse to the input. [< *NOT*.]

noth·ing (nūth'ing) *pron.* 1. No thing; not anything: *The box held nothing*. 2. No part; no portion: *Nothing remains of the old house*. 3. One of no consequence, significance, or interest: *He is nothing to me*. — *n.* 1. Something that has no existence. 2. Something that has no quantitative value; zero: *a score of two to nothing*. 3. One that has no substance or importance; a nonentity. — *adj.* Insignificant or worthless. — *adv.* In no way or degree; not at all: *She looks nothing like you*. — *Idiom. nothing doing*. *Informal*. Certainly not. [ME < OE *nāthing*: *nā*, not; see *no* + *thing*, thing; see *thing*.]

Usage Note: According to the traditional rule, *nothing* is invariably treated as a singular, even when followed by an exception phrase containing a plural noun: *Nothing except your fears stands (not stand) in your way.*

ā pat	oi boy
ā pay	ou out
ār care	ōō tōok
ā father	ōō bōot
ē pet	ū cut
ē be	ūr urge
ī pit	th thin
ī ple	th this
ir pler	hw which
ō pot	zh vision
ō toe	ā about
ō paw	item

Stress marks:
' (primary);
' (secondary), as in
dictionary (dik'shā-nēr'ē)

